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Letter from the Secretary of the Interior, transmitting, in response to a resolution of the Senate of the 13th January, 1890, reports in regard to the northern boundary of the Warm Springs Indian Reservation.

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LETTER
FROM
THE SECRETARY OF THE INTERIOR,
TRANSMITTING,

In response to a resolution of the Senate of the 13th January, 1890, reports in regard to the northern boundary of the Warm Springs Indian Reservation.

FEBRUARY 19, 1890.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, February 15, 1890.

SIR: I have the honor to acknowledge the receipt of the following resolution of the Senate:

Whereas the question of the disputed location as to the northern boundary of the Warm Springs Indian Reservation, in the State of Oregon, was determined by the Department of the Interior on July 19, 1889, by the adoption of the line as surveyed by one John A. McQuinn, in 1887; and

Whereas it is confidently asserted and strenuously insisted upon by numerous citizens of the State of Oregon, settlers on and along and near to the northern boundary line of said reservation, and some of them, as it is alleged, now upon lands included within said reservation as established by said McQuinn survey, that the line as surveyed by said John A. McQuinn in 1887, and which has been adopted by the Department as aforesaid, is not the correct line as called for in the treaty with said Indians of 1855; and

Whereas it is further alleged it was not so recognized by said Indians as the true line for a period of thirty-four years, it being further alleged that the true line was run by one Handley in the year 1871, under the direction and to the satisfaction of said Indians at that time, and that this Handley line is from 2 to 12 miles south of the McQuinn line; and

Whereas it is furthermore alleged that the establishment of the McQuinn line is not only not in accordance with the terms of the treaty, but is an absolute injustice to a great number of citizens: Therefore

Resolved, That the Secretary of the Interior be, and he is hereby, respectfully requested to cause a re-examination by a commission, or otherwise, to be made of said controversy with a view of ascertaining the real facts and of correctly establishing the northern line of said Indian reservation as called for by said treaty, as agreed to by the Indians originally, and as recognized and acted upon by them for a period of thirty-four years, if such is found to be the fact.

In response thereto I transmit herewith copy of a communication of 23d ultimo and its inclosure, from the Commissioner of the General Land Office, and copy of a communication of 8th instant from the Commissioner of Indian Affairs and its inclosure, to whom the matter was referred.

These reports give a history of the case and the reasons for the adoption of the McQuinn line by the Department.

I concur in the opinion of the Commissioner of Indian Affairs that any further investigation by agents or officers of the Department would

not throw any additional light upon the controversy, and I respectfully recommend, if it is the wish of Congress to re-open this case, that action be taken for the appointment of a commission, and that an appropriation be made for the compensation and expenses of its members; and that the matter receive early consideration, as the work of allotting the lands of the reservation in severalty will be delayed if further investigation is required.

Very respectfully,

JOHN W. NOBLE,
Secretary.

THE PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 23, 1890.

SIR: I am in receipt, by reference from the Department for report, of Senate resolution, dated 13th instant, relative to the acceptance by the Department, under date of July 19, 1889, of the northern boundary line of the Warm Springs Indian Reservation in Oregon. Said resolution reads as follows:

That the Secretary of the Interior be, and he is hereby, respectfully requested to cause a re-examination, by a commission or otherwise to be made of said controversy, with the view of ascertaining the real facts and of correctly establishing the northern line of said Indian reservation as called for by said treaty, as agreed to by the Indians, and as recognized and acted upon by them for a period of thirty-four years, if such is found to be the fact.

In reply I have the honor to report that under date of March 27, 1886, the Secretary of the Interior, in accordance with the recommendation of the Commissioner of Indian Affairs, instructed this office to cause a resurvey to be made of a portion of the northern boundary of the Warm Springs Indian Reservation in Oregon.

In compliance with departmental directions, a contract for the survey of part of the northern boundary of said reservation was awarded by the United States Surveyor-General for Oregon, under date of December 17, 1886, to John A. McQuinn, United States deputy surveyor; which contract was approved by this office May 26, 1887.

In May last the Department transmitted to this office for report a letter dated May 21, 1889, from the Commissioner of Indian Affairs, with accompanying papers, relative to the survey of the northern boundary of the Warm Springs Indian Reservation in Oregon as executed by John A. McQuinn, United States deputy surveyor, under his contract dated December 17, 1886.

By office letter E, dated May 29, 1889, a report was submitted in compliance with departmental request, a copy of which report is herewith inclosed.

Under date of July 19, 1889, the Department notified this office of the adoption of the northern boundary line of the Warm Springs Indian Reservation in Oregon, as surveyed by John A. McQuinn in 1887. The first paragraph of said letter is as follows, viz:

For the reasons stated by the Commissioner of Indian Affairs in his letter of May 21 last, and from the fact reported in your letter of May 29 that your office knows of no objection to the approval thereof, the north boundary line of the Warm Springs Reservation in Oregon as surveyed by Deputy Surveyor John A. McQuinn in 1887, is adopted as the northern boundary of said Warm Springs Reservation.

It will be observed from the foregoing that all of the action taken by this office in the matter of the survey of the northern boundary of the Warm Springs Indian Reservation in Oregon was taken in compliance with the departmental directions, which were based on the recommendations of the Commissioner of Indian Affairs.

In view of the further fact that the Commissioner of Indian Affairs is in possession of all of the correspondence connected with the initiation of said survey, and as to the disputes regarding the proper location of the northern boundary line of said reservation, by reason of which the survey in question was authorized it is respectfully suggested that Senate resolution dated January 13, 1890, be referred to the Commissioner of Indian Affairs for report as to the desirability of making a re-examination, by commission or otherwise, of the controversy as stated in the preamble to said resolution and of correctly establishing said boundary in accordance with the treaty of 1855.

Senate resolution, dated January 13, 1890, is herewith returned.

Very respectfully,

LEWIS H. GROFF,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 29, 1889.

SIR: I am in receipt, by reference from the Department for report, of a letter, dated the 21st instant, with accompanying papers from the Commissioner of Indian Affairs relative to the survey of the north boundary of the Warm Springs Indian Reservation in Oregon, as executed by John A. McQuinn, United States deputy surveyor, under his contract dated December 17, 1886.

Referring to the two lines of survey of the north boundary of said reservation, the Indian Commissioner states as follows:

Informal inquiry at the General Land Office shows that no entries have been made on the lands included between Hendley's line and that surveyed by McQuinn, but it is advisable to have an official report from the Commissioner upon the subject.

He also recommends that—

Unless the General Land Office can show satisfactory reasons to the contrary, the survey of the north boundary line of the reservation, executed by Deputy Surveyor McQuinn in 1887, be approved.

In compliance with the terms of the departmental indorsement and reference of said letter and accompanying papers, I have the honor to report that the records of this office show the following pre-emption filings on land situate between the north boundary lines of said reservation as surveyed by Hendley and McQuinn, respectively, viz:

Township 6 south, range 12 east. Section 8, S. $\frac{1}{4}$ SE. $\frac{1}{4}$, D. S. 4689, see section 17. Section 10, NW. $\frac{1}{4}$ D. S. 4688, May 17 and June 1, 1885, D. J. Holmes. Section 17, N. $\frac{1}{4}$ NE. $\frac{1}{4}$; section 17, and S. $\frac{1}{4}$ SE. $\frac{1}{4}$, section 8, D. S. 4689, May 29 and June 1, 1885, Moses Delore.

The foregoing filings, having been made upon "unoffered" lands, the same expired by limitation of law after the expiration of thirty months from the respective dates of filing, and during the early part of the year 1888. The records of The Dalles land office, within whose jurisdiction these lands are situate, are posted to September 1, 1888, and do not

show that said pre-emptors made proof and payment within the legal period as prescribed by section 2267, Revised Statutes United States.

This office knows of no objection to the approval by the Department of the north boundary of the Warm Springs Indian Reservation in Oregon, as surveyed by John A. McQuinn.

The letter of the Commissioner of Indian Affairs and accompanying papers are herewith returned.

Very respectfully,

S. M. STOCKSLAGER,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 8, 1890.

SIR: I have the honor to acknowledge the receipt, by Department reference for report, of the following resolution of the Senate, adopted January 13, 1890:

Whereas the question of the disputed location as to the northern boundary of the Warm Springs Indian Reservation, in the State of Oregon, was determined by the Department of the Interior on July 19, 1889, by the adoption of the line as surveyed by one John A. McQuinn, in 1887; and

Whereas it is confidently asserted and strenuously insisted upon by numerous citizens of the State of Oregon, settlers on and along and near to the northern boundary line of said Reservation, and some of them, as it is alleged, now upon lands included within said reservation as established by said McQuinn survey; that the line as surveyed by said John A. McQuinn, in 1887, and which has been adopted by the Department as aforesaid, is not the correct line as called for in the treaty with said Indians of 1855;

Whereas it is further alleged it was not so recognized by said Indians as the true line for a period of thirty-four years, it being further alleged that the true line was run by one Handley in the year 1871, under the direction and to the satisfaction of said Indians at that time, and that this Handley line is from 2 to 12 miles south of the McQuinn line; and

Whereas it is furthermore alleged that the establishment of the McQuinn line is not only not in accordance with the terms of the treaty, but is an absolute injustice to a great number of citizens: Therefore

Resolved, That the Secretary of the Interior be, and he is hereby, respectfully requested to cause a re-examination, by a commission or otherwise, to be made of said controversy with a view of ascertaining the real facts, and of correctly establishing the northern line of said Indian reservation, as called for by said treaty, as agreed to by the Indians originally, and as recognized and acted upon by them for a period of thirty-four years, if such is found to be the fact.

The matter of the boundary of the Warm Springs Reservation appears to have been first presented to this office by Agent Gesner, September 1, 1885.

In his letter of that date he stated that in extending the public surveys in the vicinity of the reservation it appeared likely that its boundaries on the north, south, and east had not been properly respected, and that some of the lands belonging to the reservation had been surveyed as public lands.

In office report of October 3, 1885, recommendation was made that the attention of the General Land Office be called to the subject, in order that steps might be taken to ascertain whether any of the lands embraced within the boundaries of the reservation as defined by the treaty of June 25, 1855 (12 Statutes, 964), had been surveyed as public lands; and, if so, that the surveys be corrected in the field so as to separate the reservation from the public lands by permanent marks.

October 26, 1885, the Commissioner of the General Land Office replied that the reservation had been encroached upon by the public surveys at the northwest corner, the southwest corner, and on the west side of the reservation.

The matter was then referred to the United States Indian agent at Warm Springs for examination and report.

February 15, 1886, Agent Wheeler, who had in the mean time succeeded Agent Gesner, replied to the effect that the most important question in dispute related to the northern boundary of the reservation, the Indians claiming that the initial point of said boundary was several miles north of where it was located by survey in 1871.

March 20, 1886, this office recommended that the north line of the reservation be relocated, beginning at the point designated by Agent Wheeler as the proper starting-point.

It being found impracticable to have the work done by contract, recommendation was made October 19, 1886, that the line be resurveyed and remarked as recommended in office report of March 20, 1886, the work to be done by the day.

As a result of the recommendations the north boundary was relocated by Deputy Surveyor John A. McQuinn, in 1887.

At the commencement of his work the Indians threatened to destroy all corners set from the old initial point.

This office being so advised, the following telegram was sent to Agent Wheeler June 6, 1887:

Dispatch from Deputy Surveyor McQuinn says Indians not satisfied with location and say they will destroy all corners set from Mutton Mountain. Consult with surveyor and see if satisfactory understanding between him and Indians can not be reached. Report particulars immediately.

Subsequently the agent reported that after consultation the surveyor had determined to locate the line in accordance with the claims of the Indians.

September 25, 1887, report was made to the Department upon a communication from the surveyor general of Oregon (by reference through the proper channels), expressing the belief that, in justice to whites and Indians, the case should be thoroughly investigated before the survey should be approved, and the line determined beyond a possibility of future dispute, as nearly in conformity with the treaty as practicable. He also expressed the opinion that Handley's survey of 1871 more nearly conformed to the requirements of the treaty than that of McQuinn.

In that report recommendation was made that a special agent of the General Land Office and a Special Indian Agent be sent to jointly investigate the matter on the ground, and to take such evidence as might be attainable, the result to be submitted to the department for consideration before final action should be taken upon the question of approving the survey made by McQuinn.

December 29, 1887, Special Agent Martin, of the General Land Office, and Special Indian Agent Gordon submitted their joint report of the investigation, in which they expressed the opinion that the line surveyed and established by Handley more nearly conformed to the requirements of the treaty than that established by McQuinn's survey.

They, however, recommended a material divergence from Handley's line for a considerable distance. [See Senate Ex. Doc. No. 70, Fiftieth Congress, first session.]

In office report of August 13, 1888, it was recommended that the line

suggested by Messrs. Martin and Gordon be adopted as the true north boundary of the reservation, and surveyed accordingly.

August 20, 1888, the Department returned the papers, with the remark that sufficient information was "not found in the papers presented, showing the claims of the Indians as to where the line should be located, and their reasons for its location as claimed by them, nor is there sufficient specific information in the report of Messrs. Martin and Gordon, who investigated the subject, * * * setting forth the reasons why the line, in their opinion, should be located as recommended by them."

In accordance with the instructions of the Department, Special Agents Martin and Gordon, Acting Agent Lester, ex-Agent Wheeler, and Deputy Surveyor McQuinn were each called upon to furnish all the information obtainable that would throw any light upon the points indicated.

Their reports having been received, the matter was again presented to the Department May 21, 1889, with the recommendation that the survey of the north boundary, executed by Deputy Surveyor McQuinn in 1887, be approved unless the General Land Office could show satisfactory reasons to the contrary.

After correspondence with the General Land Office, the Secretary approved this recommendation July 19, 1889.

The resolution of the Senate requests the Secretary of the Interior to cause a re-examination, by a commission or otherwise, of the controversy relating to this boundary, with a view of ascertaining the real facts and of correctly establishing the line as called for by the treaty, as agreed to by the Indians originally, and as recognized and acted upon by them for a period of thirty-four years, if such is found to be the fact.

As will be seen from office report of May 21, 1889 (copy of which is inclosed) the result of such investigation as could be made by officers of the Department was before the Secretary when he made his decision.

I do not believe that any further investigation by agents or officers of the Department would throw any additional light upon the controversy. If such investigation is to be made, a commission should be appointed for that purpose. I am not aware, however, of any authority of existing law for the appointment of such commission, or of any appropriation from which the compensation and expenses of its members can be paid.

If further examination is to be made, the passage of an act of Congress for that purpose and making a sufficient appropriation would therefore seem to be necessary.

The principal, and perhaps the only, objection to such legislation and the resulting investigation is the fact that the completion of the work of allotting the lands of the reservation in severalty will be indefinitely delayed.

This work was commenced in the fall of 1888, and carried on until the uncertainty of the true location of the northern boundary rendered further work impracticable.

It was the intention of this office to resume the work during the present month, and a special agent has been appointed with that purpose in view, the former special agent having resigned.

As some of the Indians desire allotments within the disputed territory, it is necessary that the question be finally and permanently determined before these allotments are made.

In a letter dated January 24, 1890, late Special Agent Minthorn, in reference to this matter, says:

"I could have completed the allotments when I was at the Agency in two months if the boundary question had been settled; and when I learned that the honorable Secretary of the Interior had officially recognized the McQuinn line, I hoped that the allotments might be completed, but under the present circumstances it is all uncertainty again."

If the appointment of a commission for the purpose of making the investigation, required by the Senate resolution, should be authorized by law an appropriation of \$2,000 for compensation and expenses thereof should be made.

I return the papers and inclose copy of office report of May 21, 1889.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 21, 1889.

SIR: Under date of August 20, 1888, the First Assistant Secretary returned office report of August 13, 1888, with its accompanying papers on the subject of the northern boundary of the Warm Springs Reservation, in Oregon, the exact location of which is a matter of contention between the Indians on the reservation and the white people living on the lands adjoining it, with the remark that sufficient information was "not found in the papers presented showing the claims of the Indians as to where the line should be located, and their reasons for its location as claimed by them, nor is there sufficient specific information in the report of Messrs. Martin and Gordon, who investigated the subject, * * * setting forth the reasons why the line, in their opinion, should be located as recommended by them."

He directed this office "to call on the present agent or person in charge of the Warm Springs Agency, and the former agent (Jason Wheeler), and any other known to you" (this office) "as probably possessing valuable information on this subject, for report of such information as they may be able to furnish as to the reasons why the Indians insist that the boundary should be located as they understand the treaty provides for."

Also to "call upon Messrs. Martin and Gordon to report more specifically and fully the facts and reasons which induced them to select the line recommended by them for the northern boundary of the reservation."

He further required specific information "as to the status of the Handley survey, whether it has ever received the approval of the Department, and if not, why not?"

In accordance with these instructions, letters were addressed to Acting Agent Lester, ex-Agent Wheeler, Special Agent Gordon, Special Agent Martin, and J. A. McQuinn, deputy surveyor, August 23, 24, 25, 1888, respectively, calling upon each of them to furnish this office with all the information attainable that would throw any light upon the points suggested by the Assistant Secretary.

Messrs. Martin and Gordon were also directed to give their reasons for rejecting the claims of the Indians in respect to the second McQuinn line, as well as their reasons for claiming the same.

The treaty of June 25, 1855 (12 Stat., 964), defines the boundaries of this reservation, as follows:

Commencing in the middle of the channel of the Des Chutes River, opposite the eastern termination of a range of high lands, usually known as the Mutton Mountains; thence westerly to the summit of said range along the divide to its connection with the Cascade Mountains; thence southerly to Mount Jefferson; thence down the main branch of Des Chutes River; heading in this peak, to its junction with Des Chutes River, and thence down the middle of the channel of said river to the place of beginning.

Under date of September 26, 1888, Special Agent Gordon submitted his supplemental report, in which he states:

First. That the reason for fixing the initial point of the line recommended by us at a distance of about 20 chains in a southerly direction up the Des Chutes River from the initial point of the line surveyed by Hendley, was, that in our judgment, it conformed more strictly and accurately to the terms of the treaty * * *. In our opinion the point of beginning of the line recommended by us—the same being the initial point of the first line by McQuinn and abandoned by him at the instance of the Indians—is more nearly opposite the eastern termination of the range of high lands known as the Mutton Mountains.

He then gives in detail his reasons for following the line recommended by him. These reasons are chiefly derived from the topography of the country.

Second. We did not recommend the adoption of any portion of the line established by McQuinn, except from a point on the divide between his nineteenth and twentieth mile posts to his twenty-fourth mile post, for the following reasons:

(1) Because he was no where else on the divide but at most points decidedly north of it.

(2) Because his initial point is not in the middle of the channel of the Des Chutes River opposite the eastern termination of the range of high lands known as Mutton Mountains, but is more than five miles from this on a due north line, and by the meanderings of the river, probably seven to eight miles from it.

(3) We did not deem the evidence in the affidavit of William Chenook, and in his lengthy verbal statements and in those of other Indians, * * * sufficiently definite and conclusive to warrant us in adopting the McQuinn line, otherwise than mentioned, and, in thereby deviating from our construction of the treaty, which we had with us on the field and which we there read, considered and interpreted in the light of the topography of the country; and which feature (the topography) is an important potential factor in determining what was meant by the treaty.

He then gives at length his reasons (topographically) for not accepting the line insisted upon by Chenook and others, and says:

In determining the line recommended by us, Agent Martin and myself were governed largely and chiefly by the wording of the treaty and the topography of the country, and by what appeared to us, after careful examination of both treaty and topography, to be the obvious intention of those who made the treaty. Approaching the reservation from the north, the general direction traveled by Thompson and the Indians who went with him to locate the north boundary line of the reservation, as stated to us by William Chenook, there is visible for many miles away, as you go southward, a well defined outline of high lands or range of mountains, running in a westerly direction from the eastern termination of the range known as the Mutton Mountains, terminating on the Des Chutes River and extending to the Cascade Mountains; and from the topography of the country, the reading of the treaty and the direction from which Thompson approached this range of mountains running westerly from the Des Chutes River to the Cascade Mountains, it was evident to us that the divide referred to in the treaty was the summit or anti-clinal line of this well defined range of mountains, and that Thompson intended to go to and perhaps thought he was on or near the summit of the divide when at the tree mentioned whereas he was about one mile north thereof, and which he would doubtless have discerned if he had gone a short distance up the ridge or south from the tree.

He adheres to his previous recommendation.

December 18, 1888, Special Agent Martin submitted a supplemental report.

As to the stump referred to by William Chenook, as the point from

which Agent Thompson pointed out to the Indians the north boundary of the reservation, he says:

We visited this spot and were shown the stump. It was evident it had been marked with an ax or hatchet when a part of a growing tree many years since. It stood near an old Indian trail, and other trees in the vicinity had scars apparently caused by blazes and hacks made by axes or other edged tools. The stump was situated on the edge of the Wapanitia Hill about one mile south of the creek of that name and one and one-half miles north of the summit of the range of highlands, which, after a careful examination of the surrounding country, we deemed the one referred to in the treaty and of which Wapanitia is a foot-hill, and reached the conclusion that the stump and the topography of its location did not sustain the claims of the Indians.

He gives the following reasons for rejecting the claims of the Indians respecting the McQuinn line:

The initial point of the line surveyed for the boundary by McQuinn is nearly 6 miles further north ($7\frac{1}{2}$ miles by the river) than the point in the middle of the channel of the Des Chutes River, opposite the eastern termination of the main ridge of the range of highlands usually known as the Mutton Mountains. It runs in the foothills and far down on the northern slope of the highlands until the nineteenth mile monument.

Between the nineteenth and twentieth mile monuments it intersects the main divide and follows the same to the twenty-fourth mile monument; from that point it again falls too far northward and crosses a tributary of White River, a stream which flows into the Des Chutes, far north of the range of highlands designated in the treaty. It does not conform to but is at wide variance from the terms of the treaty, except upon that part which we have designated and adopted as a part of the recommended line. We most patiently investigated the claims of the Indians in reference to this line. Many of them accompanied us during the whole investigation of the surveyed lines. We met them in council and heard, by the assistance of their official interpreter, orations by all their principal men touching the matter. That of the aged Wasco chief, Chenook, was notable. He was present when the treaty was made at The Dalles, and one of its signers. After giving a detailed account of what was said by each side in the council at which the treaty was negotiated, he narrated the visit made two years afterwards to the tree on Wapanitia hill. * * * He then gave a minute account of what was said at the blazed tree, about the boundary which was to go in different directions from that point as indicated by the extended arms of the agent of the whites, and closed in this language: "If the trees could speak; if the stones could speak; if the door of heaven could open and the Great Spirit speak, all these would tell you that what I have said of the tree and our boundary is true." * * * But admitting that Chenook, notwithstanding the lapse of thirty years, is correct about the identity of the tree, and the directions indicated for the boundary, yet, according to his statement, this event occurred two years after the treaty was signed, and I apprehend that no statement made by Dennison, Thompson, or whomsoever was present on that occasion should change boundaries previously definitely fixed by written stipulation.

After briefly stating the reasons for the slight departure from Handley's initial point, he gives the following statement of facts and reasons which induced the selection of the line recommended:

From angle 2, Handley's line runs at a right angle to the range of highlands upon which that angle is located, and makes a long, zig-zagging detour to the south, apparently for the purpose of reaching a peak in a range of highlands which run parallel to the Des Chutes River and not properly a part of the range referred to in the treaty. We recommend a line that conforms to the course of the range from angle 2 to angle 19 of Handley's line. Here that line again intersects the summit of the range of highlands; from this point to angle 24 he carefully follows the summit of the range and we recommend its adoption. From angle 24 to angle 25, he diverges widely from the summit or anticlinal line; we followed him in order to recommend the adoption of a right line from angle 25 to angle 27, to include the house and improvements of the Indian, Neena Pat. This recommendation was made with much hesitation, and is the only instance where we recommended the slightest deviation from the boundary fixed by the treaty and topography of the country, as we understood them. I am satisfied that a direct line from angle 24 to angle 27 would have been the proper recommendation. We recommended the adoption of Handley's line from angle 27 to angle 38 because it is there in strict conformity to the treaty on the summit of the divide. At angle 38,

Handley, for some inexplicable reason, left the divide, descended the mountain side hundreds of feet to a flat, run his line four miles on level ground far south of the proper place, returned to the divide no more, and terminated it long before it reached the summit of the Cascade Mountains. From angle 29 of Handley's line westwardly to the summit of the Cascades the divide is so well connected and clearly defined that a wayfaring man, though a fool, might follow it and err not, en route. * * * From angle 38 of Handley's survey, we recommended that the line should continue on the divide, as provided by the treaty, and approximately designated on the map by a red dotted line, to the point where the McQuinn line intersects the summit of the divide between the 19th and 20th mile monuments. Finding the McQuinn line from that point to the 24th mile monument on the divide and in the proper place, we recommended its adoption. From the 24th mile monument westwardly, McQuinn's line again falls north of the divide and we recommended the indicated line from that point to the summit of the Cascades, because it would follow the divide and conform to the treaty.

Mr. Martin further says that since Special Agent Gordon and himself submitted their report, he has been on the Warm Springs Reservation making a somewhat extended examination of surveys of lands for allotment, having good facilities for observing the topography of the country from many different positions or stand-points, and that he is confirmed in the belief that they were right in their previous recommendation, except as to the detour on account of "Neena Pat's" improvements.

September 27, 1888, Deputy Surveyor McQuinn replied to the inquiries of this office. His reply, however, does not throw any light upon the subject at issue.

October 29, 1888, Agent Butler replied to the inquiries addressed to Acting Agent Lester.

He states that he held a council with the Indians at which they gave their reasons for contending for the McQuinn line.

They insist [he says] that about the time the treaty was made a delegation of Indians, in company with their agent, came here to see this country, with the view of making it their reserve, and after viewing the country, they returned to the northern slope of what is known as Mutton Mountains, and there held a council and decided upon a line, and the agent marked an oak tree, and pointing to the east, said it should run to the Des Chutes River; and then pointing to the west, said it should run to the summit of the Cascade Mountains; and that they also built some stone monuments and that they still remain, and that the line Mr. McQuinn run is the line they agreed to when the treaty was made.

Agent Butler inclosed a letter from ex-Agent Wheeler in which the latter says:

At the time the treaty was made there were no white settlements south of Tygh Valley, or 15 miles north of where the McQuinn line is located, hence there was no contest as to where the line should be located. The old Indians say that it was proposed to them to have the line located along the foot hills south of the Wapanitia plain and north by several miles of where the McQuinn line is located. They (the Indians) said no, let the line be located on the divide, back of the Wapanitia Plain, then when the plain is settled some time by the whites, it will be much easier keeping their stock away from ours. This was agreed to, and they were taken to a point overlooking the Wapanitia Plain, and it was then and there mutually agreed that the line should run in the direction taken subsequently by the McQuinn line, and an oak tree was blazed near where the understanding was had. * * * These statements of the Indians made to me, and their positive testimony as to their understanding as to where the line should be run, prompted me to insist that the line should be run as the Indians desired, which Mr. McQuinn very readily did, after procuring the sworn testimony of the Indians then present, who were on the ground when the treaty was made. They have always contended for what is now the McQuinn line, and insist that no other will ever satisfy them, and for the reasons I have herein briefly given.

In a communication dated April 15, 1889, Special Agent H. J. Minthorn, who has been engaged in making allotments on this reservation

since last November, states that he is fully convinced that the boundary line as established by McQuinn in 1887 "is the boundary intended in the treaty, understood by the Indians, and more nearly corresponds to the literal wording of the treaty than either of the other lines." He also says that he is "convinced that had it not been for the interference of a few interested parties no other line could ever have been run. Much of the confusion attending the consideration of the subject at the present time arises from the fact that different persons attach peculiar significance to different words in the treaty.

"For instance, if stress is laid upon the words 'Mutton Mountains,' then arises a difficulty from the fact that there is some uncertainty as to what particular range or peaks this name now applies. * * * The name Mutton Mountains was originally applied to a large area of mountainous country lying south of Juniper Flat" (Wapanitia Plains), "from the fact that wild sheep roamed over it. These animals have long since disappeared, and the name Mutton Mountains is very generally applied to the mountainous country which is crossed by the wagon road in going from Juniper Flat south to the Warm Springs River."

He alludes to the interpretation of the word divide, and claims that it was the intention of the treaty to describe a boundary already selected and understood, "and that the distinguishing features of this boundary were that it was *a range of highlands extending in a westerly direction from the Des Chutes River and making a connection with the Cascade Mountains.*"

He then proceeds to show that there is but one well-defined and uninterrupted range answering these conditions, which is located immediately south of Wapanitia Plains, and being the one followed by McQuinn, there being two other broken ranges.

He submits several statements in support of his position, the most important being that of C. H. Walker, formerly clerk of the Warm Springs Agency, who states that in the summer of 1876 he made the ascent of Mount Hood, and with the aid of a glass had a magnificent view of the Cascade Range and the general features of the country embraced in what was claimed as the Warm Springs Reservation, taking particular notice of this part of the country.

In the fall of 1884 he again ascended Mount Hood (not to the summit, however), and took more particular notice as to the divides, peaks, etc., of the Cascade and Mutton Mountain ranges.

He concludes that—

There are at least three ranges of highlands on the Mutton Mountain system. That the most northern of the three is the only one that could be said to be a continuous range or divide from the Des Chutes west to the Cascade Mountains.

The next south, is mostly a succession of peaks; the divide is run out long before reaching the Cascade Mountains. The most southern runs in a southerly direction, and terminates at the Warm Springs River cañon, a few miles west of the point where the agency road crosses the said river.

All that range of mountains lying between Juniper Flat and the Warm Springs River is known as Mutton Mountains from the fact that wild sheep roamed over them. While the southern part of this system has the highest peaks, I believe the McQuinn line, following, as I understand, the most northern of the three divides, comes nearer to the true meaning and intent of the treaty of June 25, 1855, and the understanding the Indians then had, than does the Handley line, located from 6 to 1½ miles south of the McQuinn line.

Mr. Walker refers to the understanding of the Indians, as to the location of the line as pointed out to them by an agent of the Government at the tree frequently referred to in the several reports and state-

ments, and states that the Indians on one occasion took him to the stump of this tree and showed him the direction of the line as explained to them by the agent.

In a communication dated April 23, 1889, Special Agent Gordon gives the result of his efforts to communicate with R. R. Thompson, the agent who is said to have pointed out to the Indians the location of the line, and incloses copies of two letters from Mr. Thompson.

The first is dated November 29, 1888, addressed to Rev. R. W. McBride, in which Mr. Thompson makes the following statement:

I was Indian agent for these people at the time when General Joel Palmer, superintendent of Indian affairs for Oregon, made the treaty with them by which they were to be located south of Mutton Mountains.

I do not know what boundaries may be mentioned in the treaty, but I do know that our knowledge of the topography of that entire country south of the Tigh Valley was extremely vague. Whites and Indians had traveled along that trail by the Warm Springs toward the Klamath country and back, but knew little or nothing of the country. * * * I was directed by the superintendent to take representative or head men from each of the bands, parties to the treaty, and explore the region beyond the Tigh Valley and west of the Des Chutes River south, as far as I might find it necessary, for the purpose of finding, if possible, a location suitable for an Indian settlement. Having examined the south, west, and north, we determined upon the Chitike as the best location for our purposes that we could find, and the Indians were satisfied.

Returning to the Dalles, the Indians, when we were passing Mutton Mountains, raised the question of where the northern line would be. Just what I may have said to them I can not now recall, but under the circumstances it is quite likely I may have pointed to some natural object and told them it would come somewhere near there. I would trust the Indian's memory upon a point of this kind as against my own.

The second is dated April 19, 1889, and addressed to Special Agent Gordon. In this he states that he is unable to come to the reservation, and that if he could do so, it would be of no avail. He adds:

William Chenook (for an Indian) was very intelligent and truthful. His statement I would accept, or I will put it in this way. If I were on the ground with the Indians present, and Billy Chenook would call my attention to what I said or did, in the absence of knowledge or impression to the contrary, I would say yes.

Special Agent Gordon states that it is important that a finality be made of this question as early as practicable—

Especially in view of the fact that these Indians are now taking their lands in severalty and that some of them are hesitating to do so until the north boundary line is definitely determined and established (wishing to take their allotments on that part of the reservation).

To this end he suggests that a commission be appointed, to consist of a special agent of the General Land Office, a special agent of the Indian Office, and a citizen of Oregon, who should be instructed and empowered to locate this line—the citizen to be nominated by the Governor of Oregon or the Senatorial delegation—the commission to be authorized to take additional proof if necessary, and to be furnished with all the information in the possession of this office.

He also calls attention to the recommendation of himself and Special Agent Martin, that the west boundary be surveyed, and renews said recommendation.

He also states that recently a controversy has arisen between the Indians and some of the whites as to which is the "main branch of the Des Chutes River, heading in this peak" (Mount Jefferson), and says this question ought also to be investigated and adjudicated by the same commission.

The summit of Mount Jefferson, [he says] can not be reached. Common repute says that it has thus far defied every attempt to scale its snow-clad pinnacle. But by doing the work in summer, say beginning about the 18th of July, the survey and location of the west boundary line may be pressed and established for some distance above the line of perpetual snow on Mount Jefferson, but even to the line of perpetual snow would be sufficient for all practical purposes and for all time to come.

He then states the character of the work and the requirements for its successful execution.

He submits an estimate of the cost of the proposed commission, exclusive of the compensation of the commissioners or agents, amounting to \$610.00.

If the pay of one commissioner be added, thirty-five days, at \$8 per day, it would amount to \$890.

He suggests that a—

Citizen of Oregon be made a member of the commission, because it would probably be more satisfactory to the whites in the vicinity of the reservation, some of whom, however (stockmen), will perhaps complain, no matter where the north boundary line may be located. I am informed that some of them have been accustomed to subsist their stock on that part of the reservation, and, if so, they are therefore personally interested in the location of the line. By having a citizen of Oregon on the commission the citizens in the vicinity of the reservation might thereby feel that they had a representative in the matter and therefore be better reconciled to what might be done.

From the several reports and the evidence of the Indians the fact seems to be well established that Agent Thompson pointed out to the Indians the north line of the reservation, substantially as surveyed by McQuinn, being the most northerly of the several surveyed lines. Special Agent Gordon states that this was done before the signing of the treaty, the party going from near The Dalles, where the negotiations were pending, to decide where the north line should be. This is confirmed by ex-Agent Thompson.

No allusion is made to this visit in the proceedings of the council on file in this office. Superintendent Palmer, in transmitting the treaty, said that he was not familiar with the topography of the proposed reservation, having been over it but once. He stated that the northern boundary was a high range known as the Mutton Mountains.

He submitted a sketch of the reservation, but this throws but little if any light upon the subject.

The initial point of the north line is located on this map $9\frac{1}{2}$ miles north of the 45th degree of north latitude, while Handley's initial point is not more than 1 mile north of said degree. The north line is also but 11 miles south of the mouth of Tygh Creek, while the present line, as shown on the Land Office map, is 14 miles south of the mouth of said creek.

If Palmer's map could be relied on as accurate, these distances might be regarded as confirming the claims of the Indians to the more northern line, but this map is only a sketch, not drawn from surveys or measurements.

On a map made by Superintendent Huntington in 1864 the initial point of the north boundary is located in the northeast quarter of section 17, township 6 N., R. 15 E. This is $1\frac{1}{2}$ miles north of Handley's point; but the map is manifestly incorrect, as this point in township 6, range 15, is at least 8 miles east of the Des Chutes River, according to the public surveys.

Palmer's sketch indicates "Mutton Mountains" as a narrow range commencing at the Des Chutes River, widening as it goes westward,

with the spurs tending southwestwardly. It does not indicate any highlands between the north boundary and Taih, or Juniper Plains.

The remarks made at the council show that it was intended that the boundaries of the reservation should be natural ones, acting as barriers to the encroachments of the whites.

The Indians have, undoubtedly, always believed the northern boundary of their reservation to be the most northern range of highlands.

The confusion regarding the matter doubtless arises from the want of knowledge of the topography of the country at the time the treaty was made, and the fact that the description in the treaty may be applied to different lines.

As an illustration of this, reference may be made to the statements of Special Agents Gordon and Minthorn, each an agent of the Government, uninfluenced by any motives than those of justice and equity.

The former states that Thompson intended to go to the anticlinal line of the well-defined range of mountains running westerly from the Des Chutes River to the Cascade Mountains;

And perhaps thought he was on or near the summit of the divide when at the tree mentioned; whereas he was about one mile north thereof, and which he would doubtless have discovered if he had gone a short distance farther up the ridge or south from the tree.

The latter says:

It seems to me very evident that the intention of the treaty was to describe a boundary already selected and understood, and that the distinguishing features of this boundary were that it was a range of highlands extending in a westerly direction from the Des Chutes River and making a connection with the Cascade Mountains.

There is not one uninterrupted and well-defined range answering these conditions, and it is located immediately south of Juniper Flat, and forms a natural boundary very prominent and easily followed. This range is the one followed by the McQuinn line.

Handley, in the field notes of his survey, after stating that he commenced at a point in the middle of the Des Chutes River, opposite the range of mountains known as the Mutton Mountains, says:

I found the highlands so named, to consist of a series of rough, rocky knolls and spurs, with scarcely any system observable. * * * The treaty does not well identify this boundary, as there is no ridge or divide continuing to the Cascade Mountains.

Mr. Quinn, in the field notes of his survey, says:

By a liberal construction of the treaty of June 25, 1855, which would be to follow the average highlands and not each summit of the mountain range, would fulfil the conditions of the treaty, and as the line thus pointed out follows the average highlands, I adopt this line as it is satisfactory to the Indians and fulfills the condition of the treaty of June 25, 1855, as nearly as could be determined from information at hand.

There is one main ridge of hills extending easterly from the summit of the Cascade Mountains to the Des Chutes River. This main range divides into three ranges near Sec. 6, T. 6, S. R. 12 E., but to follow the exact summit of any one of these ranges of hills would require a zigzag line ranging, in places, three or four miles from a straight line, which I am satisfied was not the intention of the treaty.

In his communication of September 27, 1888, McQuinn says he is of the opinion that the line (judging from the lay of the main high ground) should be located as indicated by the pencil line on the printed map, that being his judgment aside from any evidence from any source save the natural lay of the land.

This pencil line conforms, in its initial point and general direction, with the line recommended by Messrs. Martin and Gordon, but runs in a direct line instead of short breaks, as recommended by them.

At the 7½-mile post of his surveyed line the pencil line approaches the former closely, and from thence runs parallel with and less than a quarter of a mile south of it.

In view of these conflicting statements and the seeming impossibility of locating the line in conformity with the treaty so as to have it correspond unquestionably with the topography of the country, and of the fact that the Indians were shown a line before the signing of the treaty, which undoubtedly corresponds very nearly, at least, with the line surveyed by McQuinn, I am of the opinion that justice and equity to them require the approval of his survey.

At the time the treaty was negotiated the Indians objected to the reservation on account of the poor quality of the land, on account of which a provision was inserted, that prior to the removal of the Indians and before any improvements should be commenced, they might select another location if one suitable and more desirable could be found.

The reservation is larger by some 100 square miles than it was estimated to be from a very imperfect knowledge of the country at the time the treaty was made, but it is reported to contain but 30,000 acres of tillable land, while it will require twice as many acres to give the Indians the quantity of agricultural land provided by the allotment act.

These Indians were unjustly despoiled of their fishing privileges, which has been a cause of frequent complaint by them.

For these reasons I believe that in locating their boundaries the treaty should be construed as favorably to their interests as its terms will permit.

Informal inquiry at the General Land Office shows that no entries have been made on the lands included between Handley's line and that surveyed by McQuinn, but it is advisable to have an official report from the Commissioner upon the subject.

Special Agent Minthorn states that but one man resides within the disputed tract. The parties chiefly interested in having the line located as far south as possible are those holding large herds of sheep and cattle.

Handley's survey was duly approved by the General Land Office, but according to all the statements in the case is manifestly incorrect.

If it should be found that any persons have just and equitable rights within the disputed territory, of which they would be deprived by the adoption of the McQuinn line, the question of compensation therefor should be submitted for Congressional action.

I have the honor to recommend that, unless the General Land Office can show satisfactory reasons to the contrary, the survey of the north boundary line of the reservation executed by Deputy Surveyor McQuinn in 1887 be approved. Also, that the Commissioner of the General Land Office be instructed to cause the survey of the west boundary of the reservation, monuments to be erected at intervals of every quarter of a mile on that part of the line where there is no timber, and on the portion where there is timber, the trees to be numerous and plainly blazed, and monuments to be established at intervals of every half mile.

The monuments should be of good size, permanent and lasting in their character, and plainly marked; which survey was also recommended in office report of August 13, 1888.

Special Agent Gordon, in his letter of April 23, 1889, renews and accentuates his previous recommendation for the survey of this line.

The Indian appropriation act for the next fiscal year, approved March 2, 1889 (Public No. 155), contains an appropriation of \$10,000 "For survey and subdivision of Indian reservations and of lands to be allotted

to the Indians, and to make allotments in severalty to be expended by the Commissioner of Indian Affairs under the direction of the Secretary of the Interior."

This is the same language as that used in the appropriation act approved March 2, 1887 (12 Stats., 464), and in previous acts under which surveys of boundaries have heretofore been made.

This appropriation will become available on the 1st of July next, and the work of surveys should be commenced as soon after that date as possible.

The cost of the survey of the west line is estimated at not exceeding \$40 per mile, say \$1,600.

Very respectfully, your obedient servant,

R. V. BELT,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

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